

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
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U.S. DISTRICT COURT E.D.N.Y.

★ FEB 17 2011 ★

LONG ISLAND OFFICE

James J. Mott Sr.

- against

10 CV 4933(JFB)(WDW)
**AFFIRMATION IN OPPOSITION
OF MOTION**

IBM

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EDNY PRO SE OFFICE

I, **James J. Mott Sr.** , affirm under penalty of perjury that:

1. I, James J. Mott Sr., am the plaintiff in the above entitled action, and respectfully submit this affirmation in opposition to the motion dated, January 28, 2011 made by IBM / Jackson Lewis / Kevin P. Lauri asking that the court order the following relief: Notice of Defendant's Motion to Dismiss Plaintiff's Complaint.

2.1 PRELIMINARY STATEMENT

IBM should be held liable in this recovery of benefits claim under ERISA because IBM is responsible to provide the qualifying information for the Plaintiff to the Plan Administrator. The plain language of the Plan states that the Special Health Assistance Provision (SHAP) which the Plaintiff seeks is available to employees who retire before 1997 and the Plaintiff worked for IBM from 1966 to 1996 and retired in 1996. Accordingly, the Plaintiff requests that this Court deny the Defendant's Motion to Dismiss.

2.2 STATEMENT OF FACTS

The Defendant states that the 'Plaintiff worked for IBM from 1997 until 2003, and as a result would have earned additional employment benefits and retirement benefits during this time.' This statement is absolutely incorrect. There were never any discussions, assumptions, or opinions that retirement benefits would ever improve. IBM had made 2 or 3 major pension plan changes prior to 1996; each change less beneficial to employees.

2.3 ARGUMENT

The Plaintiff has clearly stated a claim upon which relief should be granted. The Plaintiff will prove the facts in support of the Plaintiff's claim which will entitle the Plaintiff to relief.

2.4 POINT 1 - IBM IS THE PROPER DEFENDANT IN THIS CASE

The Plan Administrator can only make a determination of eligibility based on the qualifying information provided by IBM. Since IBM did not provide the Plaintiff's eligibility for this reimbursement, the Plan Administrator was unable to approve the Plaintiff's claim.

Therefore, the Plaintiff's claim is rightfully against IBM and the Notice of Defendant's Motion to Dismiss Plaintiff's Complaint is unfounded and should be denied.

2.5 POINT II - IBM'S DENIAL OF BENEFITS WAS UNREASONABLE

The SHAP form clearly states that the Plaintiff is eligible for this annual reimbursement. 'If you retired after December 31, 1990, but before December 31, 1996, you are eligible to apply for 80% reimbursement of your Medicare B premium. The annual maximum reimbursement per family is \$900.'

IBM did not provide the Plaintiff's eligibility to the Plan Administrator. Therefore, the Plan Administrator could not exercise its 'discretionary authority to determine eligibility for benefits'.

2.6 POINT III

The Plaintiff believes that the Defendant's Conclusion # 3 is intimidating, bullying, and a scare tactic by IBM against a lone retiree on a fixed income who is representing himself (PRO SE). The Plaintiff is attempting to receive a retirement benefit that the Plaintiff is entitled to and was promised.

3 CONCLUSIONS

Based on the foregoing, the Plaintiff respectfully requests the Court to enter an Order:

- (1) denying Defendant's Motion to Dismiss Plaintiff's Amended Complaint
- (2) granting Plaintiff's Amended Complaint in its entirety
- (3) denying Defendant such other and further relief as the Court deems just and proper; and
- (4) awarding Plaintiff such other and further relief as the Court deems just and proper.

4. In view of the foregoing, it is respectfully submitted that the motion should be denied. **I declare under penalty of perjury that the foregoing is true and correct.**

Dated: February 14, 2011 Signature James J. Matt Jr.


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cc: Kevin G. Lauri

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